

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

In re the Marriage of

WILLIAM STRIEGEL,

Appellant,

v.

pamela K. STRIEGEL,

Respondent.

No. 33206-0-II

UNPUBLISHED OPINION

Hunt, J. — William Striegel appeals a property distribution and maintenance award to Pamela K. Bird Striegel that the trial court entered following a trial dissolving their marriage. He argues that evidence does not support the trial court's findings of fact and that the trial court abused its discretion in awarding property and maintenance to Bird. We disagree and affirm.

**FACTS**

**I. The Marriage**

William Striegel (Striegel) and Pamela K. Bird (Bird) married on May 26, 1988.<sup>1</sup> They have one son born of their marriage.

Before marrying Striegel, Bird worked as a secretary and a custom decorator. She owned a home and brought to the marriage approximately \$100,000 in separate property, which she

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<sup>1</sup> There is some dispute as to whether, before marriage, the parties cohabitated while intending to marry. Nonetheless, it is not pertinent to this appeal whether they had a meretricious relationship before marrying.

contributed to the community; thereafter, she did not maintain any separate property during their marriage. Bird and Striegel agreed that she would not work outside the home and, instead, would stay at home to take care of their son.

Striegel began his career as an airplane pilot with Pride Air in 1985. After working at other companies, in 1990, he joined Alaska Airlines as a commercial airplane pilot. Striegel flew for Alaska until he retired on March 26, 2004, earning approximately \$170,000 per year. Striegel and Bird enjoyed a comfortable lifestyle as a result of Striegel's high income.

In 1990, Striegel and Bird purchased a home together using proceeds from the sale of Bird's previous, separately-owned home, borrowing funds from family members and friends and using the parties' own funds from their financial accounts and certificate of deposits.

Striegel and Bird ran separate businesses during their marriage. Striegel owned A-1 Self Storage before he married Bird. During the marriage, Striegel attempted to maintain A-1 Self Storage as his separate business; he did use community labor for the business, which increased in value during the marriage. Ten years after marrying Striegel, in 1998, Bird started her rubber-stamp art business, Cecil and Bird, which never made a profit.

On September 3, 2003,<sup>2</sup> the parties separated. Striegel was about 60 years old, and Bird was about 54 years old. At the time of separation, (1) Striegel was earning \$175,000 per year as a commercial pilot and had a monthly net income of \$10,000 to \$10,500; (2) Striegel had separate property valued around \$545,000, including financial accounts, land in Colorado, and the A-1 Self

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<sup>2</sup> The trial court's unchallenged Finding of Fact states that the parties separated on September 3, 2004. Other documents in the record, however, state that the parties separated in August 2003 and that they filed for dissolution on September 4, 2003. When asked about this discrepancy at oral argument, Striegel's counsel responded that the 2003 separation date is correct.

Storage business; (3) Bird's monthly income was \$1,000; (4) Bird did not maintain separate property; and (5) the parties had community assets worth about \$726,000.

## II. Dissolution

On September 4, 2003, Striegel filed a petition for dissolution. In November, 2003, the trial court issued a temporary order, in light of the great discrepancy in the parties' monthly incomes, directing Striegel to pay Bird maintenance of \$4,000 per month. The court also allowed the parties to withdraw \$5,000 each from a "Dain Rauscher" account for attorney fees.

The trial court otherwise restrained both parties from transferring, removing, encumbering, concealing, or disposing of any property except in the usual course of business or for the necessities of life. In October 2004, however, the court modified its November 2003 order, allowing Striegel to pay court-related obligations by withdrawing funds from community accounts for any shortfall in his current income.

In March 2005, following a bench trial, the trial court issued a written opinion, findings of fact and conclusions of law, a decree of dissolution, and a child support order. It found that Striegel's testimony was not credible and that he displayed a pattern of trying to hide assets. The trial court further found that (1) Striegel had acted in bad faith and violated its November 2003 restraining order; (2) Bird had violated its temporary order by withdrawing \$6,000 from Cecil and Bird's financial account; and (3) Bird sold her 1997 Astro Van, in violation of the trial court's order.<sup>3</sup>

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<sup>3</sup> Bird testified that she had informed Striegel of her intent and that he had replied that he did not care if she sold the van. The trial court did not specifically list the proceeds from the van's sale.

The trial court found the following property to be Striegel's separate property: (1) A-1 Self Storage, worth \$372,000, based on an appraisal by Jim Bain with Appraisal Associates;<sup>4</sup> (2) most of A-1 Self Storage's financial accounts held at First National Bank, except for RBC Account #3583, which it characterized as community property; (3) Striegel's real property in Colorado, worth \$9,000, based on Striegel's estimated value in his answers to interrogatories; (4) Striegel's financial account, RBC Account #3585, which represented his one-half share of a 2003 IRS tax refund; and (5) Striegel's Individual Retirement Account (IRA), RBC Account #3602, with a balance of \$139,929.

The trial court found the following property to be community property: (1) Striegel's Alaska Airlines Pilots Investment and Savings Plan (401k), worth \$231,996;<sup>5</sup> (2) the parties' USAA Account #7477, because there was no evidence on the documents that this was a college account for their son; (3) Cecil and Bird, which, was closed, had no financial bank account, and had remaining fixtures and inventory worth \$11,588 and \$20,000, respectively, based on Striegel's estimates; (4) RBC Account #3583; and (5) Striegel's lump sum vacation pay, when he retired from Alaska Airlines, of \$14,650, after tax and other deductions.<sup>6</sup>

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<sup>4</sup> The trial court rejected Striegel's estimate of \$380,000 and another appraiser's estimate of just over \$300,000. Striegel obtained an \$80,000 mortgage loan on A-1 Self Storage one week before trial, which the court refused to use to reduce the value of the property.

<sup>5</sup> Striegel testified that the 401k had a value of \$213,248 as of June 1, 2004, and that the difference between the court's listed value and the value as of June 1, 2004, should be separate property.

<sup>6</sup> Striegel testified that one half of this amount was separate property because he earned it after his separation from Bird.

The trial court awarded Striegel his A-1 Self Storage business and its financial accounts at First National Bank, the real property in Colorado, RBC Account #3585, Cecil and Bird's assets, and his IRA, RBC Account #3602, with a balance of \$139,929.

The trial court awarded to Bird USAA Account #7477, the value of Striegel's Alaska Airlines Pilots Investment and Savings Plan, and Striegel's lump sum vacation pay from Alaska Airlines from when he retired.

The trial court found that Striegel received separate and community property totaling \$591,092 in value that and Bird received community property totaling \$680,814 in value.<sup>7</sup>

The trial court also found that: (1) Striegel received \$3,000 per month as income from A-1 Self Storage;<sup>8</sup> (2) Striegel and Bird had divided Striegel's Alaska Airlines Pension Plan, from which Bird receives \$1,249 as income and Striegel receives \$883 as income; and (3) Striegel opted to take a lump sum amount from this plan to open an IRA, RBC Account #3602, with a balance of \$139,929 and from which Striegel receives \$500 per month as income.

The trial court further found that, at the time of the Decree of Dissolution, (1) without maintenance, Bird earned \$1,249 per month, from Striegel's Alaska Airlines Pension Plan; and (2) Striegel earned \$2,356 per month from military retirement, \$883 per month from the Alaska Airlines Pension Plan, \$500 from an IRA account, and \$3,000 from A-1 Self Storage. Finding Bird in need of maintenance and Striegel to have the ability to pay, the court ordered Striegel to

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<sup>7</sup> Although the trial court made a number of other factual findings and awards of property regarding such property as the family home, joint financial accounts, and their son's college funds, we only include those factual findings and awards of property that Striegel raises as error appeal.

<sup>8</sup> The trial court based this finding on testimony from financial expert Steven Kessler. It also reviewed A-1's income and expenses between 1998-2003.

pay \$2,000 per month to Bird between April 2005 and January 2008.

Striegel appeals.

## ANALYSIS

### I. Dissolution Findings and Awards

We review the trial court's findings of fact under the substantial evidence standard. *In re Marriage of Rideout*, 150 Wn.2d 337, 341, 77 P.3d 1174 (2003). Substantial evidence exists when the record contains evidence that is sufficient to persuade a fair-minded, rational person that the declared premise is true. *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 112, 937 P.2d 154 (1997), *cert. denied*, 522 U.S. 1077 (1998). We defer to the trier of fact on matters concerning credibility of witnesses, conflicting evidence, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

#### A. Property Distribution

In a dissolution proceeding, all property, separate and community, is before the trial court.<sup>9</sup> RCW 26.09.080. The trial court must divide the parties' separate and community properties in a just and equitable manner, considering factors such as nature and extent of community and separate property, duration of marriage, presence of children, and economic circumstances of each spouse. RCW 26.09.080. The trial court has broad discretion in distributing the parties' property, and we reverse the trial court's property division only if there is manifest abuse of discretion. *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779

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<sup>9</sup> The property's character, separate or community, does not control who may be awarded that property. *In re Marriage of Washburn*, 101 Wn.2d 168, 177, 677 P.2d 152 (1984).

(2005). Abuse of discretion occurs when a decision is manifestly unreasonable or based on untenable grounds. *Id.* (quoting *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)).

We find no such manifest abuse of discretion here. On the contrary, the evidence in the record amply supports the trial court's findings, distribution of property, and award of maintenance, particularly taking into account the great contrast in the parties' economic circumstances both before marriage and after dissolution.

#### B. Maintenance

Under RCW 26.09.090, the trial court must consider several factors in determining the just amount and duration of maintenance. These factors include: the financial resources of both parties, the parties' standard of living during the marriage, the duration of the marriage, the parties' ages and mental and physical conditions, and the time necessary for the party receiving maintenance to acquire training or education. RCW 26.09.090. The trial court has broad discretion in determining maintenance; there is no strict formula binding the trial court's exercise of this discretion. *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). Unless the court abused its discretion, we will not overturn the trial court's maintenance order on appeal.

We find no such abuse of discretion here.

#### II. Attorney Fees on Appeal

In compliance with RAP 18.1, Bird has requested attorney fees on appeal. In addition, she specifically states that she "will timely submit an affidavit of financial need as required by the

rules.” Br. of Resp’t at 48. Bird filed her financial affidavit with this court on May 12, 2006.

On May 15, 2006, the morning of oral argument, Striegel’s attorney stated that he had received Bird’s affidavit of financial need the preceding Friday afternoon, May 12, 2006. He objected to our consideration of this affidavit and to Bird’s request for attorney fees based on grounds that (1) Bird was required to serve and to file her financial affidavit at least ten days before the case is submitted to the court for decision, and (2) Bird had served him only three days before the oral argument date, thus failing to comply with RAP 18.1(c).

We agree with Striegel that Bird did not strictly comply with RAP 18.1(c)’s time requirement for filing her financial affidavit. But this fact does not defeat her request for an award of attorney fees. RAP 1.2 (a) provides:

These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

RAP 18.8(a),<sup>10</sup> in turn, provides:

The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice.

In our view, it is necessary to award attorney fees to Bird, not only based on the parties’ relative financial circumstances, but also because the basis of his claims amounted to a frivolous

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<sup>10</sup> We note that shortening the time within which Bird could file her financial affidavit is not the type of act prohibited in subsections RAP 18.8 (b) and (c) of this rule, which focus on acts affecting the finality of decisions, such as filing a notice of appeal.

We further note that Striegel admitted during oral argument that he received Bird’s financial affidavit the week prior and that he had objected to her request for attorney fees on appeal.



appeal, a waste of resources, and unnecessary appellate litigation on issues that contained little substance. Striegel's appeal is primarily a rehash of factual positions he took, and lost, at trial, rather than focused legal arguments appropriate for appeal. Contrary to his assertions on appeal, there is substantial evidence to support all of the trial court's exercise of discretion in this dissolution decree. Moreover, Striegel fails to support some of his assignments of error with citation to authority.

RCW 26.09.140 provides that the appellate court may, in its discretion, order a party to pay the other party's cost of maintaining the appeal and her appellate attorney fees, in addition to statutory costs. In deciding whether to award attorney fees, we balance the need of the requesting party against the ability of the other party to pay.<sup>11</sup> *In re Marriage of Young*, 18 Wn. App. 462, 466, 569 P.2d 70 (1977). Having examined Bird's financial affidavit, together with the record describing Striegel's ability to pay, we grant Bird attorney fees on appeal.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Hunt, J.

We concur:

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<sup>11</sup> An attorney fee award on appeal is not contingent on whether the trial court awarded attorney fees. *In re Marriage of Moore*, 99 Wn. App. 144, 148, 993 P.2d 271 (1999).

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Armstrong, J.

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Van Deren, J.